



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0079; FRL-10006-51-Region 9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from off-road mobile, diesel agricultural equipment. We are proposing to approve a local measure to reduce NO_x and PM emissions from these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2020-0079 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4118, kay.rynda@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State's Submittal

A. *What measure did the State submit?*

Table 1 lists the measure addressed by this proposal with the date that it was adopted by the California Air Resources Board (CARB). We refer to this measure as the "Valley Incentive Measure."

TABLE 1 - SUBMITTED MEASURE

Agency	Resolution #	Measure Title	Adopted	Submitted
CARB	19-26	"San Joaquin Valley Agricultural Equipment Incentive Measure," as amended by "Additional Clarifying Information for the San Joaquin Valley Agricultural Equipment Incentive Measure."	12/12/19	02/11/20

We find that the submittal for the Valley Incentive Measure meets the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of this measure?*

There are no previous versions of the Valley Incentive Measure in the SIP.

C. *What is the purpose of the submitted measure?*

Emissions of NO_x contribute to ground-level ozone, smog and particulate matter, which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function,

visibility impairment, and damage to vegetation and ecosystems. The CAA generally requires states to submit control measures to reduce NO_x and PM emissions.

The San Joaquin Valley is designated and classified as a Serious nonattainment area for the 1997 annual and 24-hour PM_{2.5} standards and the 2006 24-hour PM_{2.5} standards, and designated and classified as a Moderate nonattainment area for the 2012 annual PM_{2.5} standard.¹ On May 10, 2019, CARB submitted the “2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards,” adopted November 15, 2018 (“2018 PM_{2.5} Plan”) and the “San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan,” adopted October 25, 2018 (“Valley State SIP Strategy”), which contain, inter alia, a request to extend the attainment deadline for the 2006 PM_{2.5} standards from 2019 to 2024 in the San Joaquin Valley and commitments to achieve specific amounts of PM_{2.5} and NO_x emission reductions by 2024 and 2025 toward attainment requirements for the 2006 24-hour and the 2012 annual PM_{2.5} standards, respectively.²

The Valley Incentive Measure contains a set of enforceable commitments by CARB to monitor, assess, and regularly report on emission reductions from off-road mobile, diesel agricultural equipment replacement projects implemented through CARB’s Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer), the United States Department of Agriculture’s Natural Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP), and CARB’s Funding Agricultural Replacement Measures for Emission Reductions (FARMER) Program, according to specific guidelines and/or program criteria. These program requirements ensure, among other things, that older, dirtier agricultural

¹ 40 CFR 81.305.

² 2018 PM_{2.5} Plan, 6-2.

equipment currently in operation in the San Joaquin Valley will be replaced with less-polluting equipment.

The Valley Incentive Measure obligates CARB to achieve specific amounts of NO_x and PM_{2.5} emission reductions through implementation of these programs by specific years, to submit annual reports to the EPA beginning on May 15, 2021, detailing the implementation of specific projects and the projected emission reductions, and to adopt and submit substitute measures by specific dates if the EPA determines that the identified projects will not achieve the necessary emission reductions by the applicable implementation deadlines. The Valley Incentive Measure includes technical corrections and clarifications to the Board resolution adopting the measure, which are described in a document entitled “Additional Clarifying Information for the San Joaquin Valley Agricultural Equipment Incentive Measure.”

We are proposing to approve the Valley Incentive Measure into the California SIP and to make the State commitments contained therein enforceable by the EPA and by citizens under the CAA. The State relies on the Valley Incentive Measure to achieve 5.9 tpd of NO_x and 0.3 tpd PM_{2.5} emission reductions in 2024 and 5.1 tpd of NO_x and 0.3 tpd PM_{2.5} emission reductions in 2025 for purposes of meeting the requirements for attainment of the 2006 and 2012 PM_{2.5} NAAQS. We intend to evaluate CARB’s submitted plans to provide for attainment of the PM_{2.5} NAAQS in the San Joaquin Valley through subsequent notice-and-comment rulemaking actions, as appropriate. The EPA’s technical support document (TSD) has more information about this measure.

II. The EPA’s Evaluation and Proposed Action

A. *How is the EPA evaluating the measure?*

Generally, SIP control measures must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emission reductions (see CAA section 193).

The CAA explicitly provides for the use of economic incentive programs (EIPs) as one tool for states to use to achieve attainment of the NAAQS.³ EIPs use market-based strategies to encourage the reduction of emissions from stationary, area, and mobile sources in an efficient manner. EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act and has issued guidance for discretionary EIPs.⁴

The EPA's guidance documents addressing EIPs and other nontraditional programs provide for some flexibility in meeting established SIP requirements for enforceability and quantification of emission reductions, provided the State takes clear responsibility for ensuring that the emission reductions necessary to meet applicable CAA requirements are achieved. Accordingly, the EPA has consistently stated that nontraditional emission reduction measures submitted to satisfy SIP requirements under the Act must be accompanied by appropriate "enforceable commitments" from the State to monitor emission reductions achieved and to rectify shortfalls in a timely manner.⁵ The EPA has also consistently stated that, where a state

³ See, e.g., CAA sections 110(a)(2)(A), 172(c)(6), and 183(e)(4).

⁴ 59 FR 16690 (April 7, 1994), codified at 40 CFR part 51, subpart U and EPA, "Improving Air Quality with Economic Incentive Programs," January 2001 ("2001 EIP Guidance"). A "discretionary economic incentive program" is "any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act." 40 CFR § 51.491.

⁵ See, e.g., EPA, "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State

intends to rely on a nontraditional program to satisfy CAA requirements, the state must demonstrate that the program achieves emission reductions that are quantifiable, surplus, enforceable, and permanent.⁶

Guidance documents that we use to evaluate discretionary EIPs and other nontraditional emission reduction programs include the following:

- “Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs),” Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, October 24, 1997 (“1997 VMEP”).
- “Improving Air Quality with Economic Incentive Programs” January 2001 (EPA-452/R-01-001) (“2001 EIP Guidance”).
- “Incorporating Emerging and Voluntary Measure in a State Implementation Plan (SIP),” Stephen D. Page, OAQPS, October 4, 2004 (“2004 Emerging and Voluntary Measures Guidance”).
- “Guidance on Incorporating Bundled Measures in a State Implementation Plan,” Stephen D. Page, OAQPS, and Margo Oge, OTAQ, August 16, 2005 (“2005 Bundled Measures Guidance”).
- “Diesel Retrofits: Quantifying and Using Their Emission Benefits in SIPs and Conformity: Guidance for State and Local Air and Transportation Agencies,” March 2018 (EPA-420-B-18-017) (“2018 Diesel Retrofits Guidance”).

Implementation Plans (SIPs),” Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, October 24, 1997 (“1997 VMEP”), 4-5.

⁶ See, e.g., 2001 EIP Guidance, section 4.1.

B. *Does the measure meet the evaluation criteria?*

The Valley Incentive Measure contains clear, mandatory obligations that are enforceable against CARB and ensure that information about the emission reductions achieved through the identified incentive programs will be readily available to the public through CARB's submission of annual demonstration reports to the EPA. Our approval of the Valley Incentive Measure would make these obligations enforceable by the EPA and by citizens under the CAA. The Valley Incentive Measure obligates the State to monitor implementation of specific projects in accordance with the identified programs to ensure that these projects achieve quantifiable, surplus, permanent, and enforceable NO_x and PM_{2.5} emission reductions. The Valley Incentive Measure does not alter any existing SIP requirements. Our approval of this measure would strengthen the SIP and would not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements, consistent with the requirements of CAA section 110(l). Section 193 of the CAA does not apply to this action because this measure does not modify any SIP control requirement that was in effect before November 15, 1990.

We are proposing to find that the Valley Incentive Measure satisfies CAA requirements for enforceability, SIP revisions, and nontraditional emission reduction programs as interpreted in EPA guidance documents. The TSD contains more information on our evaluation of this measure.

C. *Proposed action and request for public comment*

The EPA proposes to fully approve the submitted measure under CAA section 110(k)(3) based on a conclusion that the measure satisfies all applicable requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication**

in the Federal Register]. If we take final action to approve the submitted measure, our final action will incorporate this measure into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the CARB measure described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

IV. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any

other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: March 16, 2020.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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